**THE HON'BLE Ms. JUSTICE G. ROHINI**

**WRIT PETITION NO.23163 OF 2006**

**DATED: 17-01-2007**

Between :

G. Krishnaiah ... Petitioner

And

1. The Commissioner of Prohibition & Excise,
   Andhra Pradesh, Hyderabad and
   4 others. .. Respondents

**THE HON'BLE Ms. JUSTICE G. ROHINI**

**WRIT PETITION NO.23163 OF 2006**

**ORDER :**

This writ petition is filed aggrieved by the action of the respondents in rejecting the application of the petitioner for grant of licence in Form-2B under the provisions of Andhra Pradesh Excise (Grant of Licence of Selling by Bar and Conditions) Rules, 2005 (for short, 'the Rules') for running a Bar & Restaurant in the premises bearing No.9-3-23 & 24, Railway Station Road, Khammam for the year 2006-07.

It is not in dispute that the petitioner was running a shop for retail sale of Indian Liquor and Foreign Liquor under the name and style of M/s. Balaji Wines in the same premises during the years 2001 and 2002 having obtained a licence under the statutory rules in force at the relevant point of time. Subsequently, the petitioner was running a Bar and Restaurant in the same premises and even for the excise year 2005-06 he was granted a licence in Form-2B under the Rules and operated a Bar & Restaurant in the said premises under the name and style of M/s. Balaji Restaurant & Bar till 30-6-2006.

When the petitioner made an application for grant of Form-2B licence for the year 2006-07 to continue the Bar & Restaurant in the same premises, the Commissioner of Prohibition & Excise vide proceedings dated 27-7-2006 issued prior clearance. However, it appears that during the verification the Prohibition & Excise Superintendent, Khammam, noticed that an educational institution by name Vikas Degree College is situated within 100 mts. from the

premises in question and submitted a report to that effect to the Deputy Commissioner of Prohibition & Excise, Warangal. In pursuance thereof, the Deputy Commissioner of Prohibition & Excise having inspected the proposed premises, vide proceedings dated 18-8-2006 rejected the application of the petitioner for grant of Form-2B licence on the ground that Vikas Degree College is situated at a distance of 60 mts. from the premises in question, thereby attracting the prohibition under Rule 6 (1) (ii) of the Rules. Aggrieved by the same, the petitioner preferred an appeal before the Commissioner of Prohibition & Excise, A.P., Hyderabad. The said Appeal was disposed of by order dated 25-8-2006 on the basis of the report of the Deputy Commissioner of Prohibition & Excise, dated 21-8-2006 with directions as under :

> *"The attention of Deputy Commissioner of Prohibition & Excise, Warangal is invited to the references cited. The Appeal Petition filed in the reference 3rd cited and report of Deputy Commissioner of Proh. and Excise, Warangal have been examined and found that one Vikas Degree College is functioning within 100 Mts. from the premises of the proposed Bar and Restaurant which is against to the Rule 6 (1) (ii) of A.P. Excise (Grant of licence of selling by Bar and Conditions) Rules, 2006. Hence the Deputy Commissioner of Prohibition & Excise, Warangal is requested to take action as per existing Law/Rules."*

Hence, this writ petition contending inter alia that the order of the 1st respondent – Appellate Authority being a non-speaking order is violative of principles of natural justice and liable to be declared as arbitrary and illegal. It is also contended that the finding of the Deputy Commissioner of Prohibition & Excise that the prohibition under Rule 6 (1) (ii) of the Rules is attracted to the premises in question is erroneous and not in accordance with law. situated within 100 mts from an educational institution the prohibited distance proposed location of Bar & Restaurant by the petitioner at the premises bearing Door No.9-3-23 & 24 is not violative of Rule 6 (1) (ii) of the Rules.

I have heard the learned Counsel for both the parties and perused the material on record.

According to the petitioner, the College - Vikas Degree College was originally located at NSP Road, Khammam, more than 1 ½ kms away from the petitioner's Restaurant & Bar. However, in the year 2004 the said college was unauthorisedly shifted to three different buildings namely H.No.9-3-36 to 39, H.No.9-3-17 & 18 and H.No.9-1-165 of Railway Station Road, Khammam. It is alleged that no permission was obtained by the said institution as required under the A.P. Education Act, 1982 and the Rules made thereunder before such shifting. In the circumstances, the petitioner made a representation dated 8-6-2005 bringing to the notice of the A.P. State Council for Higher Education about the said unauthorised shifting. He also issued a reminder dated 5-1-2006 and since no action was taken, he filed W.P.No.19575 of 2005. Pending the said writ petition, this Court granted an interim order dated 3-10-2005 directing the A.P. State Council for Higher Education to consider the objections raised by the petitioner. In spite of the same, no action was taken against the said college, but on the other hand the petitioner's application for grant of Bar Licence for the year 2006-07 under the Rules at premises bearing No.9-3-23 & 24, Railway Station Road, Khammam was rejected on the ground that the unauthorisedly shifted college is situated within 100 mts.

In this writ petition, it is contended by the petitioner that since the shifting of the college was unauthorised and illegal, the fact that it is situated within 100 mts. from the petitioner's premises is of no consequence and it cannot be said that the prohibition under Rule 6 (1) (ii) of the Rules is attracted.

In the counter-affidavit filed by the Deputy Commissioner of Prohibition & Excise, except reiterating the fact that Vikas Degree College is functioning within a distance of 60 mts. from the premises in question, nothing has been stated whether the shifting of the said

educational institution to the Railway Station Road is in accordance with law or not.

It is to be noted that clause (ii) of sub-rule (1) of Rule 6 of the Rules specifically employs the words "Educational Institutions recognised by the Government". Hence, when an objection was raised by the petitioner that the institution in question is not recognised by the Government, it is necessary for the licensing authority to consider such objection and to record a finding on merits before deciding whether the prohibition under Rule 6 (1) (ii) is attracted or not. The 3rd respondent – Licensing Authority in his order, dated 21-8-2006, without recording any finding as to the specific objection raised by the petitioner that Vikas Degree College is not an institution recognised by the Government, rejected the request of the petitioner merely on the ground that it is within 100 mts. Even the 1st respondent - Appellate Authority failed to apply his mind to the said issue while deciding the Appeal. As a matter of fact, under the impugned order no decision as such was expressed by the 1st respondent except directing the 3rd respondent to take action as per the existing law/rules. The said order which was passed without application of mind to the issue involved is unsustainable and liable to be set aside on that ground alone.

Accordingly, the order of the 1st respondent dated 25-8-2006 is set aside and the Writ Petition is disposed of with a direction to the 1st respondent to reconsider the petitioner's appeal and pass appropriate orders in accordance with law in the light of the observations made above, as expeditiously as possible preferably within a period of four weeks from the date of receipt of this order. No costs.

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G. ROHINI, J.

Dt. 17-1-2007

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